

APPEAL

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:04-cv-11362-RWZ**

Linton v. New York Life Insurance and Annuity
Corporation
Assigned to: Judge Rya W. Zobel
Cause: 28:1332 Diversity-Insurance Contract

Date Filed: 06/16/2004
Jury Demand: None
Nature of Suit: 110 Insurance
Jurisdiction: Diversity

Plaintiff

Barry Linton

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V.

Defendant

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Date Filed	#	Docket Text
06/16/2004	<u>91</u>	NOTICE OF REMOVAL by New York Life Insurance and Annuity Corporation from Essex Superior, case number 04-2269. \$ 150, receipt number 56624, filed by New York Life Insurance and Annuity Corporation.(Johnson, Jay) (Entered: 06/18/2004)
06/16/2004	<u>92</u>	If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Collings. (Johnson, Jay) (Entered: 06/18/2004)
07/02/2004	<u>93</u>	STATE COURT Record New York Life Insurance and Annuity Corporation served on 6/5/2004, answer due 6/25/2004.. (Johnson, Jay) (Entered: 07/20/2004)
07/08/2004	<u>92</u>	STIPULATION extending time for defendant to respond to complaint to 7/23/04 by Barry Linton, New York Life Insurance and Annuity Corporation. (Johnson, Jay) (Entered: 07/08/2004)

		07/08/2004)
07/23/2004	<u>4</u>	MOTION to Dismiss by New York Life Insurance and Annuity Corporation.(Urso, Lisa) (Entered: 07/26/2004)
07/23/2004	<u>5</u>	MEMORANDUM in Support re <u>4</u> MOTION to Dismiss filed by New York Life Insurance and Annuity Corporation. (Urso, Lisa) (Entered: 07/26/2004)
07/23/2004	<u>6</u>	DECLARATION of Levina Wong re <u>4</u> MOTION to Dismiss by New York Life Insurance and Annuity Corporation. (Urso, Lisa) (Entered: 07/26/2004)
07/30/2004	<u>7</u>	Assented to MOTION for Extension of Time to 9/3/04 to respond to motion to dismiss by Barry Linton.(Urso, Lisa) (Entered: 08/02/2004)
08/02/2004		Judge Rya W. Zobel : electronic ORDER entered granting <u>7</u> Motion for Extension of Time. Response due 9/3/04. (Urso, Lisa) (Entered: 08/02/2004)
09/07/2004		Notice of correction to docket made by Court staff. Correction: #8 opposition to motion to dismiss, filed on 9/3/04 corrected because: Pleading had no front descriptive page, pleading was deleted and will be re-filed by counsel (Johnson, Jay) (Entered: 09/07/2004)
09/07/2004	<u>8</u>	First MEMORANDUM in Opposition re <u>4</u> MOTION to Dismiss filed by Barry Linton. (Grahm, Richard) (Entered: 09/07/2004)
09/07/2004	<u>9</u>	Assented to MOTION for Extension of Time to September 17, 2004 to File Response/Reply as to <u>8</u> Memorandum in Opposition to Motion to Dismiss by New York Life Insurance and Annuity Corporation.(Wong, Levina) (Entered: 09/07/2004)
09/13/2004		Judge Rya W. Zobel : electronic ORDER entered granting <u>9</u> Motion for Extension of Time to File Response/Reply re <u>9</u> Assented to MOTION for Extension of Time to September 17, 2004 to File Response/Reply as to <u>8</u> Memorandum in Opposition to Motion to Dismiss Replies due by 9/17/2004. (Urso, Lisa) (Entered: 09/13/2004)
09/17/2004	<u>10</u>	REPLY to Response to Motion re <u>4</u> MOTION to Dismiss filed by New York Life Insurance and Annuity Corporation. (Donovan, John) (Entered: 09/17/2004)

12/03/2004	11	Automatic Document disclosure by Barry Linton.(Johnson, Jay) (Entered: 12/07/2004)
02/08/2005	12	Motion to Stay Discovery by New York Life Insurance and Annuity Corporation. (Attachments: # 1 Memorandum of Law in Support of Motion to Stay Further Discovery)(Wong, Levina) Modified on 2/9/2005 (Johnson, Jay). (Entered: 02/08/2005)
02/09/2005		Notice of correction to docket made by Court staff. Correction:. "#12 motion for protective order corrected because: Wrong Event. (the document is a motion to stay discovery, the clerk will fix to reflect the pleading) (Johnson, Jay) (Entered: 02/09/2005)
02/18/2005	13	Opposition re 12 MOTION for Protective Order filed by Barry Linton. (Attachments: # 1 Brief in support of opposition and cross motion to compel depositions and for sanctions.# 2 Exhibit First deposition notice# 3 Exhibit Second deposition notice)(Henderson, Perry) (Entered: 02/18/2005)
03/01/2005	14	Judge Rya W. Zobel : ORDER entered. MEMORANDUM AND OPINION. "Accordingly, defendants motion to dismiss is allowed as to Count 7 and denied as to Counts 1,2,5,and 6". (Johnson, Jay) (Entered: 03/01/2005)
04/01/2005	15	ANSWER to Complaint by New York Life Insurance and Annuity Corporation.(Donovan, John) (Entered: 04/01/2005)
04/04/2005	16	NOTICE of Scheduling Conference Scheduling Conference set for 5/4/2005 03:00 PM in Courtroom 12 before Judge Rya W. Zobel. (Urso, Lisa) (Entered: 04/04/2005)
04/13/2005		NOTICE OF RESCHEDULING Scheduling Conference reset for 4/28/2005 03:00 PM in Courtroom 12 before Judge Rya W. Zobel. (Urso, Lisa) (Entered: 04/13/2005)
04/15/2005	17	CERTIFICATION pursuant to Local Rule 16.1 by New York Life Insurance and Annuity Corporation.(Donovan, John) (Entered: 04/15/2005)
04/20/2005	18	CERTIFICATION pursuant to Local Rule 16.1 by Barry Linton.(Henderson, Perry) (Entered: 04/20/2005)
04/21/2005	19	JOINT SUBMISSION pursuant to Local Rule 16.1 <i>concerning proposed pretrial schedule</i> by Barry Linton.(Henderson, Perry) (Entered: 04/21/2005)

04/28/2005	●	Electronic Clerk's Notes for proceedings held before Judge Rya W. Zobel : Scheduling Conference held on 4/28/2005. Judge accepts joint statement par. 1,2, 3, & 4; Motions due by no later than 12/2/2005; oppositions 3 weeks after; hearing to be set; (Urso, Lisa) (Entered: 05/02/2005)
05/17/2005	●20	Proposed Document(s) submitted by New York Life Insurance and Annuity Corporation. Document received: Joint Stipulated Protective Order. (Wong, Levina) (Entered: 05/17/2005)
05/31/2005	●21	Judge Rya W. Zobel : ORDER entered. STIPULATED PROTECTIVE ORDER(Urso, Lisa) Modified on 6/2/2005 (Johnson, Jay). (Entered: 06/01/2005)
08/30/2005	●22	JOINT SUBMISSION pursuant to Local Rule 16.1 <i>Joint Stipulation to Amend Scheduling Order</i> by Barry Linton, New York Life Insurance and Annuity Corporation.(Mulligan, Mark) (Entered: 08/30/2005)
08/31/2005	●	Notice of correction to docket made by Court staff. Correction: #22 Joint Submission corrected because: Document not signed by attorney who filed document. (e-mail sent describing the fix) (Johnson, Jay) (Entered: 08/31/2005)
11/17/2005	●23	Joint MOTION for Extension of Time to January 23, 2006 to File Dispositive Motions by New York Life Insurance and Annuity Corporation.(Wong, Levina) (Entered: 11/17/2005)
11/21/2005	●	Judge Rya W. Zobel : endorsedORDER entered granting <u>23</u> Motion for Extension of Time. Motions due 1/23/06; oppositions 2/13/06; hearing set for 2/22/06 at 2:00 p.m. (Urso, Lisa) (Entered: 11/22/2005)
01/17/2006	●24	Joint MOTION for Extension of Time to February 6, 2006 to File Dispositive Motions by New York Life Insurance and Annuity Corporation.(Wong, Levina) (Entered: 01/17/2006)
01/18/2006	●	Judge Rya W. Zobel : Electronic ORDER entered granting <u>24</u> Motion for Extension of Time; Motion to be filed by 2/6/06; opposition 3/6/06; Motion Hearing set for 3/16/2006 02:00 PM in Courtroom 12 before Judge Rya W. Zobel. (Urso, Lisa) (Entered: 01/18/2006)
02/01/2006	●25	MOTION for Extension of Time to February 13 to file motion and enlarge page count by Barry Linton.(Henderson, Perry) (Entered: 02/01/2006)

02/03/2006	25	Judge Rya W. Zobel : Electronic ORDER entered granting <u>25</u> Motion for Extension of Time. Motions 2/13/06; oppositions 3/13/06; hearing remains on 3/16/06 at 2:00 p.m. (Urso, Lisa) (Entered: 02/03/2006)
02/13/2006	26	MOTION for Summary Judgment by New York Life Insurance and Annuity Corporation. (Attachments: # <u>1</u> Memorandum of Law# <u>2</u> Concise Statement of Undisputed Facts# <u>3</u> Affidavit John Hess, Jr.# <u>4</u> Affidavit Levina Wong# <u>5</u> Exhibit Notice of Electronic Filing of Exhibits)(Jones, Robert) (Entered: 02/13/2006)
02/13/2006	27	MOTION for Partial Summary Judgment by Barry Linton. (Attachments: # <u>1</u> Affidavit Barry Linton# <u>2</u> Affidavit P Andy Henderson# <u>3</u>)(Henderson, Perry) Modified on 2/14/2006 (Johnson, Jay). (Entered: 02/13/2006)
02/13/2006	28	Exhibit B by Barry Linton. (Attachments: # <u>1</u> Exhibit # <u>2</u> # <u>3</u> # <u>4</u> # <u>5</u> # <u>6</u> # <u>7</u> # <u>8</u> # <u>9</u> # <u>10</u> # <u>11</u> # <u>12</u> # <u>13</u> # <u>14</u> # <u>15</u> # <u>16</u>) (Henderson, Perry) Modified on 2/14/2006 (Johnson, Jay). (Entered: 02/13/2006)
02/13/2006	29	MEMORANDUM in Support re <u>27</u> MOTION for Summary Judgment filed by Barry Linton. (Attachments: # (1)) (Henderson, Perry) Additional attachment(s) added on 2/14/2006 (Johnson, Jay). (Entered: 02/13/2006)
02/14/2006		Notice of correction to docket made by Court staff. Correction: #28 Motion for Summary Judgment corrected because: WRONG EVENT. Pleading seems to be an exhibit not a motion. Clerks office will fix. (Johnson, Jay) (Entered: 02/14/2006)
02/14/2006	30	MEMORANDUM in Support re <u>26</u> MOTION for Summary Judgment filed by New York Life Insurance and Annuity Corporation. (Jones, Robert) (Entered: 02/14/2006)
02/14/2006		Documents terminated: <u>28</u> MOTION for Summary Judgment filed by Barry Linton,. (Johnson, Jay) (Entered: 02/14/2006)
02/14/2006	31	AFFIDAVIT in Support re <u>26</u> MOTION for Summary Judgment of <i>John Hess, Jr.</i> filed by New York Life Insurance and Annuity Corporation. (Jones, Robert) (Entered: 02/14/2006)
02/14/2006	32	AFFIDAVIT of Levina Wong in Support re <u>26</u> MOTION for Summary Judgment filed by New York Life Insurance and

		Annuity Corporation. (Attachments: # <u>1</u> Notice of Filing with Clerk's Office)(Jones, Robert) (Entered: 02/14/2006)
03/13/2006	<u>33</u>	Opposition re <u>27</u> MOTION for Summary Judgment filed by New York Life Insurance and Annuity Corporation. (Attachments: # <u>1</u> Response to Plaintiff's 56.1 Statement) (Jones, Robert) (Entered: 03/13/2006)
03/13/2006	<u>34</u>	Opposition re Statement of facts attached to <u>26</u> MOTION for Summary Judgment filed by Barry Linton. (Henderson, Perry) Modified on 3/14/2006 (Johnson, Jay). (Entered: 03/13/2006)
03/13/2006	<u>35</u>	MEMORANDUM in Opposition re <u>26</u> MOTION for Summary Judgment filed by Barry Linton. (Henderson, Perry) Additional attachment(s) added on 3/14/2006 (Johnson, Jay). (Entered: 03/13/2006)
03/14/2006		Notice of correction to docket made by Court staff. Correction: #35 Memorandum in Opposition corrected because: Unsigned Document. E-mail has been sent describing the fix. (Johnson, Jay) (Entered: 03/14/2006)
03/16/2006		ElectronicClerk's Notes for proceedings held before Judge Rya W. Zobel : Motion Hearing held on 3/16/2006 re <u>26</u> MOTION for Summary Judgment filed by New York Life Insurance and Annuity Corporation., <u>27</u> MOTION for Summary Judgment filed by Barry Linton., Judge takes matter under advisement; (Court Reporter Catherine Handel.) (Urso, Lisa) (Entered: 03/21/2006)
04/03/2006	<u>36</u>	TRANSCRIPT of Summary Judgment Hearing held on March 16, 2006 before Judge Zobel. Court Reporter: Catherine A. Handel. The original transcripts are maintained in the case file in the Clerk's Office. Copies may be obtained by contacting the court reporter at 617/261-0555 or the Clerk's Office. (Scalfani, Deborah) (Entered: 04/03/2006)
04/25/2006	<u>37</u>	NOTICE by Barry Linton of <i>Supplemental Authority with Certificate of Service</i> (Attachments: # <u>1</u> Exhibit Recent Case) (Henderson, Perry) (Entered: 04/25/2006)
04/28/2006	<u>38</u>	Response by New York Life Insurance and Annuity Corporation to <u>37</u> Notice (Other). (Jones, Robert) (Entered: 04/28/2006)
09/18/2006	<u>39</u>	Judge Rya W. Zobel : MEMORANDUM OF DECISION AND ORDER entered granting <u>26</u> Motion for Summary

		Judgment, on all remaining counts of the complaint is allowed; denying 27 Motion for Summary Judgment. Judgment may be entered for defendant on Counts I, II, V AND VI and dismissing Counts III, IV and VII. (Urso, Lisa) (Entered: 09/19/2006)
09/19/2006	<u>40</u>	Judge Rya W. Zobel : ORDER entered. JUDGMENT in favor of defendant on Counts I, II, V and VI and dismissing Counts III, IV and VII. (Urso, Lisa) (Entered: 09/19/2006)
09/29/2006	<u>41</u>	MOTION to Alter Judgment by Barry Linton. (Attachments: # <u>1</u> Memorandum of Law in Support)(Henderson, Perry) (Entered: 09/29/2006)
10/02/2006		● Notice of correction to docket made by Court staff. Correction: #41 Motion to Alter Judgment corrected because: Memorandum in Support Should be Filed as Seperate Document. E-mail sent describing the fix. (Johnson, Jay) (Entered: 10/02/2006)
10/13/2006	<u>42</u>	Opposition re <u>41</u> MOTION to Alter Judgment filed by New York Life Insurance and Annuity Corporation. (Wong, Levina) Additional attachment(s) added on 10/16/2006 (Johnson, Jay). (Entered: 10/13/2006)
10/16/2006		● Notice of correction to docket made by Court staff. Correction: #42 Opposition corrected because: Attorney that files the document must sign the document. E-mail sent describing the fix. (Johnson, Jay) (Entered: 10/16/2006)
10/25/2006	<u>43</u>	Judge Rya W. Zobel : ORDER entered; Memorandum of Decision; denying <u>41</u> Motion to Alter Judgment (Urso, Lisa) (Entered: 10/25/2006)
11/21/2006		● Filing fee: \$ 455, receipt number 76521 for <u>44</u> Notice of Appeal, (Johnson, Jay) (Entered: 11/27/2006)
11/22/2006	<u>44</u>	NOTICE OF APPEAL as to <u>43</u> Order on Motion to Alter Judgment, <u>40</u> Judgment by Barry Linton. NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov/clerks/transcript.htm MUST be completed and submitted to the Court of Appeals. Appeal Record due by 12/12/2006. (Henderson, Perry) (Entered: 11/22/2006)

